IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Income Tax Appeal No.209 of 2006
with
Income Tax Appeal No.361 of 2006
with
Income Tax Appeal No.600 of 2005

Jayantilal K. Bhagat .. .. Appellant
v/s.
The Assistant Commissioner of Income-tax. .. .. Respondent

W i t h

Income Tax Appeal No.443 of 2004

Jayantilal K. Bhagat .. .. Appellant
v/s.
The Jt.Commissioner of Income-tax .. .. Respondent

Mrs.Vasanti B. Patel for appellants.
Mr.R.G.Bhatt for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 5th September 2006

P.C. :

1. All these Appeals arise out of the orders passed by the Income Tax Appellate Tribunal. The appellants have let out certain premises to the Shamrao Vithal Co-operative Bank. The question arose as to whether the income arising out of rent and/or compensation paid by the said Bank to the appellants should be computed as income from house property or income from other sources. These four Appeals are concerning the assessment for four

different Assessment Years. Appeals are admitted and heard forthwith.

2. Income Tax Appeal No.443 of 2004 is concerning Assessment Year 1994-95 and the Tribunal has taken the view as stated above that it will have to be charged as income from other sources and not from income of the house property. This view of the Tribunal is contrary to the law laid down by the Division Bench of this Court in **CIT vs. Bhaktawar Construction Pvt. Ltd. reported in 162 ITR page 452** and a recent judgment of the Apex Court in **Shambhu Investment P. Ltd. vs. CIT reported in 263 ITR page 143**. The Appeals, therefore, raise the following question of law:-

> " Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the service charges received by the Appellants under the Agreement dated 08.02.1993 from Shamrao Vithal Co-operative Bank Limited are to be taxed under the head 'Income from other sources' and not under the head 'Income from house property' ?

3. In view of what is stated above, Mr.Bhatt appearing for the respondents leaves it to the Court to pass appropriate orders. Accordingly, we allow all these Appeals and for the reasons stated above, set aside the orders passed by the Tribunal.

4. All the above Appeals will stand allowed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)